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JOHNNY RAY BURTON

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 JOHNNY RAY BURTON, and
DAWN MCCANN

15 Defendants.
16

No. CR 12-0406 MMC

STIPULATION AND [PROPOSED]
ORDER CHANGING BRIEFING
SCHEDULE, HEARING DATE AND
EXCLUDING TIME

17
18 The Court has set October 16, 2013 as the date for substantive motions in this matter. The
19 Court has also set the following briefing schedule: motion filing deadline is September 11, 2013;
20 oppositions due by September 25, 2013; replies due by October 2, 2013. The parties hereby
21 stipulate and request an extension of the briefing schedule and filing deadlines, along with the
22 motion hearing date for the following reasons:

- 23 (1) Defendant Johnny Ray Burton had requested a retest of the suspected controlled
24 substance seized in this case and had anticipated receiving those results prior to the
25 filing of motions. Defense counsel has been informed by government counsel, Kevin
26 Barry, that the chemist who conducted the original testing is no longer with the
27 government lab; accordingly, the Government must retest the substance with a new

28 STIPULATION AND [PROPOSED] ORDER CHANGING HEARING DATE AND EXCLUDING TIME
CR 12-0406 MMC, United States v. Johnny Ray Burton and Dawn McCann

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1 chemist. This is expected to take a few weeks. Thereafter, Mr. Burton would have the
2 opportunity for retest by an independent laboratory.

3 (2) Defense Counsel for Johnny Burton has a pending discovery request regarding the
4 seizure of Mr. Burton's cellphone. The discovery pertaining to the cellphone could
5 very well be the subject of a motion, depending on what, if any, discovery exists
6 regarding Mr. Burton's cellphone. Given the lack of information at this point, it would
7 be more prudent for the merits a potential suppression motion to be assessed upon
8 review of the discovery. It is expected that this discovery will be provided in the next
9 few weeks.

10 Given these unanticipated issues, the parties request the following briefing schedule, based
11 on the courts availability: Motions due: October 16, 2013; Oppositions due October 30, 2013,
12 Replies due November 6, 2013, hearing date November 20, 2013 or, December 11, 2013. Defense
13 Counsel for Mr. Burton is unavailable November 27 and December 4, 2013 due to pre-planned
14 travel. The parties further request that time between these dates be excluded from any time limits
15 applicable under 18 U.S.C. § 3161, for the purpose of effective preparation. *See* 18 U.S.C.
16 §3161(h)(7)(B)(iv).

17 SO STIPULATED:

18 MELINDA HAAG
19 United States Attorney

20 DATED: September 4, 2013

21 /s/ /
KEVIN J. BARRY
Assistant United States Attorney

22 DATED: September 4, 2013

23 /s/
JULIA MEZHINSKY JAYNE
24 Attorney for JOHNNY RAY BURTON

25 DATED: September 4, 2013

26 /s/
GEORGE BOISSEAU
27 Attorney for DAWN MCCANN

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~~PROPOSED~~ ORDER

For the reasons stated above, the Court sets the following briefing schedule: Motions due: October 16, 2013; Oppositions due October 30, 2013, Replies due November 6, 2013. The Court further sets a Motions date of ~~November 20, 2013~~ [December 11, 2013].

It also finds that exclusion from the time limits applicable under 18 U.S.C. § 3161 of the period from October 16, 2013 through ~~November 20, 2013~~ [December 11, 2013] is warranted and that the ends of justice served by the continuance outweigh the best interests of the public and the defendant in a speedy trial. 18 U.S.C. §3161(h)(7)(A). The failure to grant the requested exclusion of time would deny counsel for the defendant and for the government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence, resulting in a miscarriage of justice. 18 U.S.C. § 3161(h)(7)(B)(iv).

IT IS SO ORDERED.

DATED: _____, 2013-
September 6, 2013



THE HONORABLE MAXINE M. CHESNEY
United States District Judge